

**AUG 25 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN CRUZ-CRUZ, aka Daniel Mayen,

Defendant - Appellant.

No. 05-10542

D.C. No. CR-04-00138-HDM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Howard D. McKibben, District Judge, Presiding

Submitted August 21, 2006<sup>\*\*</sup>

Before: GOODWIN, REINHARDT and BEA, Circuit Judges.

Juan Cruz-Cruz appeals from the 46-month sentence imposed following a guilty-plea conviction for unlawful reentry by a deported alien, in violation of 8

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Cruz-Cruz contends that his 46-month sentence unreasonable because the district court refused to reduce his sentence to account for the “unwarranted” sentencing disparities caused by the lack of fast-track systems in some districts. This contention is foreclosed by *United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006) (concluding that “the disparity between Appellants’ sentences and the sentences imposed on similarly situated defendants who are not prosecuted in fast-track districts is not unwarranted”).

Cruz-Cruz also contends that the doctrine of constitutional avoidance requires that his sentence not exceed two years, the statutory maximum under 8 U.S.C. § 1326(a), because he did not admit his prior conviction and it was not proven to a jury beyond a reasonable doubt. This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See also United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that *Almendarez-Torres* is binding precedent unless and until it is explicitly overruled by the Supreme Court).

**AFFIRMED.**